

NTSB Order No.
EM-28

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.,
on the 7th day of February 1973.

CHESTER R. BENDER, Commandant, United States Coast Guard,

vs.

BILLY ROQUE, Appellant.

Docket ME-25

ORDER DISMISSING APPEAL

On September 18, 1972, Counsel for the Commandant moved to dismiss the instant appeal because of appellant's failure to file a brief, as required by the Board's rules.¹ Appellant has not filed an answer to the motion.

The Commandant's decision which gave raise to this appeal was issued August 16, 1971. Previously, appellant had appealed to the Commandant (Appeal No. 1848) from the initial decision of Coast Guard Examiner Allen L. Smith, rendered after a full evidentiary hearing.² Upon review of the hearing record, the Commandant found on February 27, 1970, appellant was convicted in a court of record of possession of heroin in violation of a narcotic drug law of the State of Florida, and by reason of such conviction, the Commandant sustained the revocation of appellant's merchant mariner's document (No. Z-1160135) and all other seaman's documents under authority of

¹14 CFR 425.30 provide, in pertinent part, as follows:
"§425.20 Briefs or memoranda in support of appeal.

(a) Within 20 days after filing of a notice of appeal, the appellant must file...a brief or memoranda in support of the appeal."

* * * *

§ 425.30 Action by the Board.

(a) If timely action to perfect an appeal under § 425.20 is not taken by an appellant, the Board will, on its own motion or on motion of the Coast Guard, dismiss the appeal."

²Copies of the decisions of the Commandant and the examiner are attached hereto.

46 U.S.C. 239 b.³

From our review of the record, it appears that since appellant's initial notification to the Board of an intention to appeal the Commandant's decision, by letter dated September 8, 1971, no further communication has been received from him. Despite an extension of time to file his brief, granted by the Board in acknowledging and accepting this letter as his notice of appeal, and several subsequent opportunities, appellant has failed to file his appeal brief.

From the foregoing, it is further apparent that appellant has no intention of complying with the Board's rules and prosecuting his appeal. Consequently, the Commandant's motion to dismiss the appeal will be granted.

ACCORDINGLY, IT IS ORDERED THAT:

The instant appeal from the order of the Commandant affirming the examiner's revocation of appellant's seaman's documents, under authority of 46 U.S.C. 239 b, be and it hereby is dismissed.

REED, Chairman, McADAMS, THAYER, BURGESS, and HALEY, Members of the Board, concurred in the above order.

³46 U.S.C. 239 b, in relevant part, provides that:

"The Secretary [of Transportation] may--

...(b) take action, based on a hearing before a Coast Guard examiner, under hearing procedures prescribed by the Administrative Procedure Act, as amended, to revoke the seaman's document of--

(1) Any person who, subsequent to July 15, 1954, and within ten years prior to the institution of the action, has been convicted in a court of record of a violation of the narcotic drug laws of the United States, the District of Columbia, or any State or Territory of the United States, the revocation to be subject to the conviction's becoming final...."

We have previously held that the delegations of the Secretary of Transportation to the Commandant provide sufficient authority for the purpose of exercising the power of revocation under 46 U.S.C. 239 b. See Commandant v. Snider, Order ME-2, adopted September 24, 1969, 49 CFR 1.46(b).

(SEAL)